IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 398 OF 2006

M/S IFB INDUSTRIES LTD.,VERNA, SALCETE GOA. ....Petitioner

Versus

UNION OF INDIA (THROUGH THE SECRETARY AND 4 ORS., ...Respondents

Mr. H.K. Maingi, Advocate for the Petitioners.
Mr. Joseph Vaz, Central Government Standing Counsel for the Respondent Nos.1,3, 4, 5.

Coram:- J. N. PATEL &
N. A. BRITTO, JJ.

Date:- 6th November, 2006

P.C.:-

Heard.

As the petition can be disposed of at the stage of admission itself, as far as respondent no.2 is concerned being a formal party he need not be served for the purpose of disposing of this petition.

The subject matter of the petition pertains to the rejection of the application filed by the petitioners seeking condonation of delay in filing application for fixation of Brand Rate of duty drawback under Rule 6(1)(a) of the Customs and Central Excise Duties Drawback Rules, 1995. The main contention of the petitioners is that the respondent no.2 being the competent authority is vested with the powers to condone the delay in filing application and inspite of such application being made without giving an opportunity to the petitioners, respondent no.4 has passed the impugned Order by letter dated 20-6-2006 annexed to the petition at Exh.'H'. It is submitted that an application for fixation of Brand Rate of duty drawback has to be preferred within 90 days from the date of

rejection of the application for drawback under Section 75.

It is contended on behalf of the petitioners that the petitioners having been informed that they are not entitled to apply for the drawback the petitioners have applied under Section 75 and that the competent authority has powers to condone the delay. It is submitted that rejecting the application of the petitioners for condonation of delay without giving them an opportunity of hearing and further by passing a non speaking order, has occasioned in causing injustice to the petitioners and, therefore,the impugned Order deserves to be quashed and set aside with a direction to the competent authority to consider the application of the petitioners for condonation of delay after giving them due opportunity of hearing and dispose of the same by passing a speaking order.

The learned Central Government Standing Counsel appearing for the respondent nos.1, 3, 4 and 5 submits that if this Court so directs, the competent authority would hear the petitioners on their application afresh for condonation of delay and pass appropriate orders in the course of time.

We, therefore, allow the petition in terms of prayer clause (b) which reads hereunder:

> "In the alternative this Honourable Court may be pleased to set aside the order conveying rejection of the petitioners' request for condonation of delay and direct the competent authority by a writ of mandamus or any other writ or direction or order to hear and decide such request afresh after granting a personal hearing".

We will highly appreciate if the competent authority disposes of the application for condonation of delay within a period of three months from the date of receipt of the certified copy of our order.

The petition stands disposed of accordingly.

J. N. PATEL, J.

N. A. BRITTO, J.

RD.